

SENATE BILL No. 528

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-24-5.5.

Synopsis: Eminent domain for pipeline companies. Requires a pipeline company that seeks to acquire an interest in land to make an offer to the landowner to purchase the interest at least 30 days before filing a condemnation action. Provides that the offer must include: (1) a copy of the appraisal on which the company's offer is based; and (2) a statement that the landowner is entitled to hire a disinterested appraiser to perform an appraisal, the costs of which will be paid for by the company, in an amount not exceeding \$2,500. Sets forth the procedures to be followed by a landowner who chooses to obtain an appraisal. Provides that a landowner whose property is located within one-half mile of a proposed pipeline may obtain a qualified appraisal to determine whether the property is materially diminished in value as a result of the proposed pipeline. Provides that the affected landowner's property is materially diminished in value if there is a reduction in value of at least 10% from a baseline value. Provides that the affected landowner may file a suit to recover the amount by which the value of the property has been materially diminished. Sets forth procedures to be followed in a suit brought by an affected landowner.

Effective: Upon passage.

Jackman

January 23, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 528

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-24-5.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:
4 **Chapter 5.5. Eminent Domain for Pipeline Companies**
5 **Sec. 1. As used in this chapter, "landowner" means an owner of**
6 **real property in Indiana, as determined by the tax records of the**
7 **county in which the property is located.**
8 **Sec. 2. As used in this chapter, "pipeline" has the meaning set**
9 **forth in IC 8-1-22.5-1(c).**
10 **Sec. 3. As used in this chapter, "pipeline company" means a**
11 **person (as defined in IC 8-1-22.5-1(e)) that:**
12 **(1) constructs; or**
13 **(2) proposes to construct;**
14 **a pipeline that is or will be located, in whole or in part, in Indiana.**
15 **Sec. 4. Except as otherwise provided in this chapter, and to the**
16 **extent not preempted by federal law, IC 32-24-1 applies to the**
17 **appropriation and condemnation of land and easements in land in**



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Indiana by a pipeline company.

Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, a pipeline company that seeks to acquire an interest in land from a landowner must, at least thirty (30) days before filing a complaint for condemnation, make an offer to the landowner to purchase the interest sought. The offer must be based on an appraisal of the property by a disinterested appraiser who:

(1) is licensed under IC 25-34.1; and

(2) has, by education and experience, the knowledge and qualifications to make a proper, just, and true valuation of the property being appraised.

(b) Subject to subsection (c), the offer required by this section shall be:

(1) made in the form prescribed by IC 32-24-1-5; and

(2) served upon the landowner or published in accordance with IC 32-24-1-5.

(c) In addition to the information required by IC 32-24-1-5, the offer required by this section must include the following:

(1) A copy of the appraisal report upon which the pipeline company's offer is based. The report must clearly identify the licensed appraiser who made the appraisal.

(2) A statement indicating:

(A) that the landowner has the right to hire a disinterested appraiser to appraise the interest in the property sought by the pipeline company; and

(B) that the pipeline company will pay the cost of an appraisal sought by the landowner, in an amount not exceeding two thousand five hundred dollars (\$2,500).

(3) Instructions on how the landowner may exercise the landowner's right to obtain an appraisal, as described in subsections (d) through (g).

(4) A form, to be returned to the pipeline company, by which the landowner may indicate the landowner's intention to obtain an appraisal. The form described in this subdivision must require the landowner to identify a disinterested appraiser who:

(A) is licensed under IC 25-34.1; and

(B) has, by education and experience, the knowledge and qualifications to make a proper, just, and true valuation of the property interest sought to be acquired.

(d) The landowner has thirty days (30) days from the date of the offer to accept or reject the pipeline company's offer. However, if

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the landowner chooses to exercise the landowner's right to hire an appraiser, as described in subsection (c)(2), the landowner must notify the pipeline company of the landowner's decision to exercise the right. The landowner shall notify the pipeline company by returning the form described in subsection (c)(4) not later than fourteen (14) days after the date of the pipeline company's offer. If the landowner does not return the form described in subsection (c)(4) within the fourteen (14) day period described in this subsection, the pipeline company may:

(1) presume that the landowner will not exercise the landowner's right to obtain an appraisal; and

(2) proceed to file a condemnation complaint under IC 32-24-1 if the landowner does not accept the pipeline company's offer not later thirty (30) days after the date of the offer.

(e) If the landowner chooses to exercise the landowner's right to hire an appraiser, as described in subsection (c)(2), the landowner shall cause:

(1) the appraisal to be performed by the appraiser identified in the form returned to the pipeline company under subsection (d); and

(2) the report of the appraiser to be mailed or delivered to the pipeline company;

not later than forty-five (45) days after the date of the pipeline company's offer.

(f) If the pipeline company receives the appraisal report prepared by the landowner's appraiser within the forty-five (45) day period described in subsection (e), the pipeline company may:

(1) accept the report of the landowner's appraiser and make an offer to purchase the property interest in accordance with the appraiser's valuation; or

(2) reject the report of the landowner's appraiser and proceed to file a condemnation complaint under IC 32-24-1.

Regardless of whether the pipeline company accepts or rejects the report of the landowner's appraiser, the pipeline company shall pay the landowner for the cost of the appraisal, subject to the limitation described in subsection (c)(2)(B), not later than thirty (30) days after the pipeline company receives the appraisal report. If the pipeline company rejects the report of the landowner's appraiser and proceeds to file a condemnation complaint under IC 32-24-1, the appraisal report prepared by the landowner's appraiser may be used by the landowner in the proceedings as

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evidence of the value of the property interest sought to be acquired.

(g) If the pipeline company does not receive the appraisal report prepared by the landowner's appraiser within the forty-five (45) day period described in subsection (e), the pipeline company:

(1) may proceed to file a condemnation complaint under IC 32-24-1; and

(2) is not liable for the cost of the landowner's appraisal.

However, the appraisal report prepared by the landowner's appraiser may be used by the landowner, in any condemnation proceeding brought by the pipeline company under IC 32-24-1, as evidence of the value of the property interest sought to be acquired.

Sec. 6. (a) As used in this section, "affected landowner" means an owner of real property in Indiana, as determined by the tax records of the county in which the property is located, whose property is located within one-half (1/2) mile of a proposed pipeline that will be located, in whole or in part, in Indiana. The term does not include a landowner whose property is subject to an offer or a condemnation action under section 5 of this chapter.

(b) As used in this section, "baseline value", with respect to an affected landowner's property, means the fair market value of the property as determined by an appraisal that:

(1) is performed by a disinterested appraiser who:

(A) is licensed under IC 25-34.1; and

(B) has, by education and experience, the knowledge and qualifications to make a proper, just, and true valuation of the property being appraised;

(2) is based on sales data for generally comparable properties; and

(3) is performed:

(A) not earlier than two (2) years before the construction of the pipeline begins in Indiana; and

(B) not later than six (6) months before the construction of the pipeline begins in Indiana.

(c) As used in this section, "materially diminished in value", with respect to an affected landowner's property, means a reduction in the fair market value of the property of at least ten percent (10%) from the baseline value, as determined by a qualified appraisal.

(d) As used in this section, "qualified appraisal", with respect to the property of an affected landowner, means an appraisal that:

(1) is performed by a disinterested appraiser who:

(A) is licensed under IC 25-34.1; and

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- 1 (B) has, by education and experience, the knowledge and
- 2 qualifications to make a proper, just, and true valuation of
- 3 the property being appraised;
- 4 (2) is based on sales data for generally comparable properties
- 5 located in a generally comparable vicinity to a pipeline or
- 6 similar project; and
- 7 (3) is performed:
 - 8 (A) not earlier than six (6) months before the construction
 - 9 of the pipeline begins in Indiana; and
 - 10 (B) not later than one (1) year after the construction of the
 - 11 pipeline is completed in Indiana.
- 12 (e) An affected landowner may obtain a qualified appraisal to
- 13 determine whether the landowner's property is materially
- 14 diminished in value as a result of the proposed pipeline. If the
- 15 qualified appraisal indicates that the landowner's property is
- 16 materially diminished in value, the affected landowner may bring
- 17 a suit in the circuit court of the county in which the property is
- 18 located to recover the amount by which the value of the property
- 19 has been materially diminished. An affected landowner that seeks
- 20 to bring an action under this section must file:
 - 21 (1) a complaint for the damages alleged; and
 - 22 (2) a copy of the qualified appraisal on which the complaint
 - 23 for damages is based;
- 24 with the court not later than one (1) year after the date of the
- 25 qualified appraisal. Upon filing the complaint, the affected
- 26 landowner shall provide notice of the complaint, along with a copy
- 27 of the qualified appraisal upon which the complaint is based, to the
- 28 pipeline company by certified mail.
- 29 (f) Upon the filing of the complaint by the affected landowner,
- 30 the court may require the landowner to file with the circuit court
- 31 clerk a surety bond that is:
 - 32 (1) in an amount fixed by the court;
 - 33 (2) payable to the pipeline company; and
 - 34 (3) conditioned to pay the costs of the action if the action is
 - 35 determined against the affected landowner.
- 36 (g) The pipeline company may file written exceptions to the
- 37 qualified assessment on which the affected landowner's complaint
- 38 under subsection (e) is based. Exceptions to the qualified
- 39 assessment must be filed not later than twenty (20) days after the
- 40 filing of the complaint. After the twenty (20) day period set forth
- 41 in this subsection, the cause shall be heard without delay and
- 42 determined by the court without a jury. At the hearing, either

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party is entitled to be represented by counsel and to present additional appraisals or other evidence of the fair market value of the affected landowner's property. At the time of the hearing, the court shall consider the exceptions, if any, that are filed by the pipeline company under this subsection. The court shall issue a determination in the matter not later than thirty (30) days after the hearing. The court may:

- (1) confirm the amount of damages alleged by the affected landowner in the landowner's complaint;
- (2) award damages to the affected landowner in an amount that is greater or less than the amount alleged by the affected landowner in the landowner's complaint; or
- (3) deny all relief to the affected landowner.

The decision of the court is final, subject to the right of appeal by either party.

(h) If the affected landowner is awarded damages under subsection (g), the affected landowner is entitled to:

- (1) reasonable attorney's fees;
- (2) court costs; and
- (3) other reasonable expenses of the action;

as determined by the court.

(i) If the affected landowner is denied all relief under subsection (g), the court may award to the pipeline company:

- (1) reasonable attorney's fees;
- (2) court costs; and
- (3) other reasonable expenses of the action;

as determined by the court, if the court finds that the action is frivolous or vexatious. Any surety bond required by the court under subsection (f) may be used to pay any award to the pipeline company under this subsection.

(j) The right to bring a suit under this section does not pass to a subsequent purchaser of an affected landowner's property who purchases the property after the pipeline company has given the notice required by 18 CFR 157.6(d)(1).

SECTION 2. An emergency is declared for this act.

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